

# **EXHIBIT D**

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**From:** Josh Budwin <jbudwin@McKoolSmith.com>  
**Sent:** Saturday, February 04, 2012 3:42 PM  
**To:** Josh Budwin; Perito, Andrew; jdoan@haltomdoan.com  
**Cc:** Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
**Subject:** RE: Eolas: Defendants' demonstratives

My message got cut off:

Andrew -

Our technical expert had a family issue, and had to return home today. We expect him to return tomorrow (Sunday), and will likely proceed with the second inspection then.

Thanks.

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**From:** Josh Budwin  
**Sent:** Saturday, February 04, 2012 3:41 PM  
**To:** 'Perito, Andrew'; jdoan@haltomdoan.com  
**Cc:** Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
**Subject:** RE: Eolas: Defendants' demonstratives

Hi Andrew -

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**From:** Perito, Andrew [mailto:andrew.perito@weil.com]  
**Sent:** Saturday, February 04, 2012 2:01 PM  
**To:** Josh Budwin; jdoan@haltomdoan.com  
**Cc:** Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
**Subject:** RE: Eolas: Defendants' demonstratives

Josh, please advise when before 8:00 pm tonight your team will be coming to inspect the machines and code we have been discussing and that have been available for inspection since early yesterday afternoon. Thank you.

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**From:** Perito, Andrew  
**Sent:** Saturday, February 04, 2012 10:23 AM  
**To:** Perito, Andrew; Josh Budwin; jdoan@haltomdoan.com  
**Cc:** Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
**Subject:** RE: Eolas: Defendants' demonstratives

Josh, we have technical staff in from out of town and on stand-by for the inspection. Please let us know when today your team will be coming to inspect.

Thanks,  
Andrew

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**From:** Perito, Andrew [mailto:andrew.perito@weil.com]  
**Sent:** Friday, February 03, 2012 9:58 PM  
**To:** Josh Budwin; jdoan@haltomdoan.com  
**Cc:** Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
**Subject:** RE: Eolas: Defendants' demonstratives

Josh, we've followed up regarding your questions and have included responses below. As I explained this afternoon, the machines are available, and we stand ready for your inspection. Is there a time tomorrow morning that your team can come by?

(1) Yes, we have "client," "server" and "remote" machines available for inspection.

(2) VID 00000012 illustrates Viola, so I am confused by your question regarding a tkWWW patch, which doesn't relate to that video. Perhaps we've got wires crossed here. Any additional information you could provide to help us answer your question?

As to VID 00000018, if by "shim" you are referring to the file that refers vplot for remoted execution, that file is on the machines available for inspection and was created 1/29/12.

Below is the cross-reference table for the videos with the code bates numbers and production dates.

Best,  
Andrew

Code Bates Number	Code (first production date on 7/12/10 unless otherwise noted)	Video Bates Number
YAHOO-E03114701; PA-NAT-00000119; PA-NAT-0000078; 8/18/11 Wei Production	viola 950414 3.3 (public), vplot 930507, 950920 plot.v from viola.org (public, 8/18/11)	VID00000012
YAHOO-E03114697; PA-NAT-00000115; PA-NAT-0000078	viola 930512, vplot 930507	VID00000013; VID00000022 (viola 930512 only)
YAHOO-E03114698; PA-NAT-00000116; PA-NAT-0000078	viola 930512, vplot 930812	VID00000014
YAHOO-E03114699; PA-NAT-00000117; PA-NAT-0000078	viola 930527, vplot 930507	VID00000015
YAHOO-E03114696; PA-NAT-00000114; PA-NAT-0000078	viola 931016, vplot 930507	VID00000016
YAHOO-E03114695; PA-NAT-00000113; PA-NAT-0000078	viola 931016	VID00000017
YAHOO-E03114703; PA-NAT-00000121; PA-NAT-0000078	viola 930512, vplot 930507, 2012 vplot script for remoted execution (2/1/12)	VID00000018

YAHOO-E03114702; PA-NAT-00000120; PA-NAT-0000078	viola 931016, viola 930527, vplot 930507	VID000000026 (viola 931016 only); VID000000027
YAHOO-E03114700; PA-NAT-00000118	viola 920730 (public)	VID000000029

-----Original Message-----

From: Josh Budwin [mailto:jbudwin@McKoolSmith.com]  
Sent: Friday, February 03, 2012 6:52 PM  
To: Perito, Andrew; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Andrew -

Thanks. Two points of clarification.

(1) Yesterday, the "remote" machine was not present. Is it present now?

(2) We will come inspect once we are provided with the information related to videos 12/18 and the code listing. Please provide it as soon as you are able.

Thank you.

-----Original Message-----

From: Perito, Andrew [mailto:andrew.perito@weil.com]  
Sent: Friday, February 03, 2012 7:50 PM  
To: Josh Budwin; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Josh, as to your first question, yes, we have "client," "server" and "remote" SPARCstations 10 machines available for your inspection.

There is no question that these machines--some 20 years old--are fragile, though I understand you may not agree with my particular choice of words. We appreciate your seeking to minimize the time on these machines, and I will look into your questions regarding videos 12 and 18 and providing a list of these videos with associated code production numbers and dates. As to the "agreement," we are providing access to these demonstratives more than two days in advance of their intended use at trial.

Will your team be coming tonight to inspect the machines?

Thanks,  
Andrew

-----Original Message-----

From: Josh Budwin [mailto:jbudwin@McKoolSmith.com]  
Sent: Friday, February 03, 2012 5:17 PM

To: Perito, Andrew; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Andrew -

My understanding is that at least one of the machines used in some of the videos you identify below was not available. Will the "remote" machine be available for inspection?

For video 12, do you have the patch used for tkWWW? What's the date of the patch?

For video 18, do you have the shim program? What's the date of the shim?

Additionally, it will minimize our inspection time on your "fragile" machines if you tell us which code productions (by date and bates range) correspond to each of the videos you've identified below. Please provide this information.

Finally, I'm not sure what "agreement" you are referring to. As stated in our motion to preclude, we believe the belated production of videos/machines is improper and the inspection we attempted last night does not change this.

Please advise.

-----Original Message-----

From: Perito, Andrew [mailto:andrew.perito@weil.com]  
Sent: Friday, February 03, 2012 4:38 PM  
To: Josh Budwin; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Josh, given the age and fragility of the computers, I am sure you appreciate that the hardware failures we experienced when your team visited last night were beyond our control. They appear to have been caused by the trip to Tyler, which we did at Plaintiffs' request.

Defendants intend to introduce the videos I list below on Monday. Defendants are making the machines and code for those videos are available now, and we invite you to come and inspect them today. If there are videos that Defendants plan to introduce at a later date, Defendants will make corresponding machines and code available accordingly, per the parties' agreement.

Best,  
Andrew

-----Original Message-----

From: Josh Budwin [mailto:jbudwin@McKoolSmith.com]  
Sent: Friday, February 03, 2012 2:12 PM  
To: Perito, Andrew; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

What about the other videos? Given the time we wasted last night, we don't want to track back and forth multiple times. Please let us know when we'll be able to inspect the machines with the all of the configurations set forth in all of the videos.

Thank you.

-----Original Message-----

From: Perito, Andrew [mailto:andrew.perito@weil.com]  
Sent: Friday, February 03, 2012 4:10 PM  
To: Josh Budwin; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Josh, we have code and machines available for inspection and can walk your technical team through the steps to configure them in the same manner as for Videos 0012-18, 22, 26-27 and 29.

Best,  
Andrew

-----Original Message-----

From: Josh Budwin [mailto:jbudwin@McKoolSmith.com]  
Sent: Friday, February 03, 2012 1:27 PM  
To: Perito, Andrew; jdoan@haltomdoan.com  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas; Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Andrew -

Please confirm that all of the machines will be configured in the same manner as VID 0001-0029.

Thank you.

-----Original Message-----

From: Perito, Andrew [mailto:andrew.perito@weil.com]  
Sent: Friday, February 03, 2012 3:05 PM  
To: jdoan@haltomdoan.com; Josh Budwin  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Josh, we were able to work around the hardware problems we encountered last night during the inspection and have the machines and code available for inspection now. Please let us know when your team would like to come by to inspect. We can run the "ls -laRF /" command your technical staff requested as our technical staff walk them through the steps used to run the demonstrations.

Best,  
Andrew

Andrew Perito

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-----Original Message-----

From: Jennifer Doan [mailto:jdoan@haltomdoan.com]  
Sent: Friday, February 03, 2012 12:33 AM  
To: 'Josh Budwin'  
Cc: Kevin Burgess; Mehta, Sonal; Defendants-Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Thanks Josh -- Yes, as you know, apparently one of the computers failed while you were there. These are very delicate, old machines. We are endeavoring to meet your requests and will advise in the morning. JD

-----Original Message-----

From: Josh Budwin [mailto:jbudwin@McKoolSmith.com]  
Sent: Thursday, February 02, 2012 9:31 PM  
To: Jennifer Doan  
Cc: Kevin Burgess; Sonal Mehta; Defendants-Eolas  
Subject: RE: Eolas: Defendants' demonstratives

Jennifer -

At your invitation, we stopped by your office for an inspection tonight. And, contrary to your express representations, not all of the code and machines shown in the videos were present. Our technical team also noted other serious deficiencies which were explained to Sonal.

Please let us know immediately once the noted deficiencies are corrected and all of the machines and code are available for inspection.

Thank you.

-----Original Message-----

From: Jennifer Doan [mailto:jdoan@haltomdoan.com]  
Sent: Thursday, February 02, 2012 6:33 PM  
To: Josh Budwin  
Cc: Kevin Burgess; Sonal Mehta; Defendants-Eolas  
Subject: Re: Eolas: Defendants' demonstratives

Josh:

You should be able to access all of the code. Call me with any questions

Jennifer

Sent from my iPhone

On Feb 2, 2012, at 6:02 PM, "Josh Budwin" <jbudwin@McKoolSmith.com> wrote:

> Jennifer-

>

> Is this running instances of ALL or just SOME of the newly produced material? As you're aware, the newly produced material includes much more than just "the Viola code bases."

>

> Please provide a specific and detailed list of what is available for inspection and how this corresponds to each of the recent productions.

>

> Thanks.

>

> -----Original Message-----

> From: Jennifer Doan [mailto:jdoan@haltomdoan.com]

> Sent: Thursday, February 02, 2012 5:17 PM

> To: Josh Budwin; Kevin Burgess

> Cc: Sonal Mehta; Defendants-Eolas

> Subject: Eolas: Defendants' demonstratives

>

>

> Josh and Kevin:

>

> As I mentioned in our meet and confer this afternoon, we have set up 1992 Sun Sparc Stations in Tyler with the Viola code bases, including the vplot code at issue in this case. I've confirmed those machines have been unpacked and are up and running.

>

> You are welcome to inspect them to confirm the video demonstratives that we intend to introduce in this case. If you wish to do so, please contact Sonal Mehta at 650.248.7319 and she will make arrange for you go get in the building etc.

>

> I'll be in Tyler tomorrow, if you wish to inspect them tomorrow,  
> please just let me know. My cell is 903.278.7485

>

> Thanks much--

>

> Jennifer

>

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